

REMARKS

As discussed herein, Applicants respectfully request reconsideration and withdrawal of the rejection of record.

Preliminary Matter

Applicants respectfully request acknowledgement of Applicants' claim of priority based on Appln. No 60/215,237 in the next communication from the Patent Office.

Status of the Claims

The previous art-based rejection has been withdrawn, and all of the pending claims (claims 2-10) are now newly provisionally rejected for alleged obviousness-type double patenting.

Response to Rejection

Claims 2-10 are provisionally rejected for alleged obviousness-type double patenting over claims 1-14 of copending Appln. No. 10/206,652 (the "'652 Appln.") in view of U.S. Patent No. 5,747,467 to Agouridas et al. ("AGOURIDAS"). The rejection states that one having ordinary skill in the art would have been motivated to modify the compounds of the '652 Appln. in accordance with AGOURIDAS to attain the presently claimed invention.

In response to the rejection, Applicants note that the rejection is provisional. Of course, a prerequisite for actual double patenting is an issued conflicting patent. Thus, in this case, an actual rejection would not be appropriate (even if factually supported) unless and until conflicting claims of the '652 Appln. issued in a patent. However, the '652 Appln. relied upon has not been allowed, but is rejected over the present application. Because the provisional rejection of the above-captioned application appears to be the sole remaining obstacle to allowance and issue, Applicants respectfully submit that the rejection should be withdrawn so that a patent may issue. See MPEP 804(I)(B) (instructing to maintain provisional rejection UNLESS it is the sole rejection). Presumably, the existing provisional rejection of the '652 Appln. would then be converted into an actual rejection. In sum, allowance and issue of the present application would not present the double-patenting situation suggested by the rejection, because the '652 Application has not been allowed and

thus would not be expected to issue prior to the present application. Accordingly, early allowance of the present application is respectfully requested.


Conclusion

In view of the above, Applicants respectfully submit that all of the pending claims are allowable in their present form, and that the application is otherwise in condition for allowance. The Examiner is respectfully requested to withdraw the rejection and, as the next official action, to provide a Notice of Allowance.

If any issues remain which can be resolved by a telephone conference, or should the Examiner have any questions or comments regarding this matter, the Examiner is respectfully invited to contact the undersigned at the telephone number shown below.

Respectfully submitted,

Date: 4 May 04


Frank W. Forman
Attorney for Applicant(s)
Reg. No. 42,547

Pfizer Inc
Patent Department
Eastern Point Road, MS8260-1611
Groton, Connecticut 06340
(860) 715-5669